

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

TEMP-TATIONS, LLC,

Plaintiff,

v.

VALUEVISION MEDIA, INC.,
doing business as
SHOPHQ

Defendant.

Civil Action No. 2:13-cv-6822

Hon. Jan E. DuBois

**DEFENDANT SHOPHQ'S ANSWER TO
PLAINTIFF TEMP-TATIONS, LLC'S VERIFIED COMPLAINT**

Defendant ValueVision Media, Inc., doing business as ShopHQ ("ShopHQ"), by and through its undersigned counsel, hereby responds to the Verified Complaint (the "Complaint") of Temp-Tations, LLC's ("Temp-Tations"), as follows:

1. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint and, on that basis, denies those allegations.
2. ShopHQ admits the allegations contained in paragraph 2 in the Complaint.
3. ShopHQ admits that Plaintiff asserts a claim for trade-dress infringement and unfair competition under the Lanham Act, 15 U.S.C. §§ 1125(a) and the common law of Pennsylvania, but denies that any such claims are cognizable claims under the relevant statute or common law, and asserts they are without basis in fact or in law.
4. ShopHQ admits that Temp-Tations purports to base jurisdiction on 29 U.S.C. §§ 1338(a) and 1338(b) and 15 U.S.C. § 1121 et seq.; however, these allegations constitute legal

conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in these allegations.

5. The allegations contained in paragraph 5 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in these allegations.

6. The allegations contained in paragraph 6 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ admits that it transacts business within the Commonwealth of Pennsylvania, but denies the remaining factual allegations in paragraph 6 of the Complaint.

7. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and, on that basis, denies those allegations.

8. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and, on that basis, denies those allegations.

9. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and, on that basis, denies those allegations.

10. The allegations contained in paragraph 10 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 10 of the Complaint.

11. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and, on that basis, denies those allegations.

12. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and, on that basis, denies those allegations.

13. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and, on that basis, denies those allegations.

14. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and, on that basis, denies those allegations.

15. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and, on that basis, denies those allegations.

16. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and, on that basis, denies those allegations.

17. The allegations contained in paragraph 17 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the facts contained in the allegations in paragraph 17 of the Complaint and, on that basis, denies those allegations.

18. The allegations contained in paragraph 18 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the facts contained in the allegations in paragraph 18 of the Complaint and, on that basis, denies those allegations.

19. The allegations contained in paragraph 19 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 19 of the Complaint.

20. The allegations contained in paragraph 20 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 20 of the Complaint.

21. ShopHQ denies the allegations contained in paragraph 21 of the Complaint.

22. ShopHQ denies the allegations contained in paragraph 22 of the Complaint.

23. ShopHQ denies the allegations contained in paragraph 23 of the Complaint.

24. ShopHQ denies the allegations contained in paragraph 24 of the Complaint.

25. The allegations contained in paragraph 25 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 25 of the Complaint.

26. The allegations contained in paragraph 26 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 26 of the Complaint.

27. The allegations contained in paragraph 27 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 27 of the Complaint.

28. ShopHQ is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and, on that basis, denies those allegations.

29. The allegations contained in paragraph 29 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 29 of the Complaint.

30. The allegations contained in paragraph 30 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 30 of the Complaint.

Answer to Count I: Alleged Violation of the Federal Lanham Act, 15 U.S.C. § 1125(a) for Trade Dress

31. ShopHQ incorporates herein by reference all allegations, statements, denials and admissions contained in the previous paragraphs.

32. ShopHQ denies the allegations contained in paragraph 32 of the Complaint.

33. ShopHQ denies the allegations contained in paragraph 33 of the Complaint.

34. The allegations contained in paragraph 34 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 34 of the Complaint.

35. The allegations contained in paragraph 35 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 35 of the Complaint.

36. The allegations contained in paragraph 36 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 36 of the Complaint.

37. The allegations contained in paragraph 37 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 37 of the Complaint.

Answer to Count II: Alleged Violation of the Federal Lanham Act, 15 U.S.C. § 1125(a) for Unfair Competition

38. ShopHQ incorporates herein by reference all allegations, statements, denials, and admissions contained in the previous paragraphs.

39. ShopHQ denies the allegations contained in paragraph 39 of the Complaint.

40. The allegations contained in paragraph 40 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 40 of the Complaint.

41. The allegations contained in paragraph 41 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 41 of the Complaint.

42. The allegations contained in paragraph 42 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 42 of the Complaint.

43. The allegations contained in paragraph 43 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 43 of the Complaint.

Answer to Count III: Alleged Violation of the Pennsylvania Common Law

44. ShopHQ incorporates herein by reference all allegations, statements, denials, and admissions contained in the previous paragraphs.

45. The allegations contained in paragraph 45 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 45 of the Complaint.

46. The allegations contained in paragraph 46 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 46 of the Complaint.

47. The allegations contained in paragraph 47 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 47 of the Complaint.

48. The allegations contained in paragraph 48 of the Complaint constitute legal conclusions to which no response is required. By way of further response, ShopHQ denies any facts contained in the allegations in paragraph 48 of the Complaint.

General Denial

49. ShopHQ denies each and every allegation not expressly admitted here and denies that the Plaintiff is entitled to any relief prayed for in the Complaint, including that relief

specifically prayed for in paragraphs I-VI. ShopHQ is without knowledge or information sufficient to form a belief as to the authenticity attached by Plaintiff as exhibits to the Complaint.

AFFIRMATIVE DEFENSES

50. As and for separate affirmative defenses to the Complaint, ShopHQ alleges the following affirmative defenses. By alleging the matters set forth in these affirmative defenses, ShopHQ does not thereby allege or admit that it has the burden of proof and/or persuasion with respect to any of these matters.

FIRST DEFENSE

51. The claims asserted in the Complaint fail to state a claim upon which relief can be granted.

SECOND DEFENSE

52. Plaintiff's recovery is barred by the doctrine of fair use.

third DEFENSE

53. Plaintiff's recovery is barred because the asserted imitated wares and the design thereof are functional.

FOURTH DEFENSE

54. Plaintiff's request for preliminary injunctive relief is estopped by laches.

FIFTH DEFENSE

55. Plaintiff's recovery is barred because the design of the asserted imitated wares is generic.

SIXTH DEFENSE

56. Plaintiff's recovery is barred because the asserted imitated wares and the design thereof have no acquired distinctiveness.

SEVENTH DEFENSE

57. Plaintiff's recovery is barred by unclean hands.

PRAYER FOR RELIEF

WHEREFORE, ShopHQ prays for judgment as follows:

- (A) That Plaintiffs take nothing by way of their Complaint;
- (B) That the Court dismiss plaintiff's claims with prejudice;
- (C) That the Court enter an Order declaring that ShopHQ's merchandise does not constitute trade dress infringement or unfair competition;
- (D) That ShopHQ be awarded its costs and attorneys' fees;
- (E) That the Court grant such other relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

ShopHQ hereby demands a trial by jury on all claims that may be tried before a jury.

Dated: December 23, 2013

Respectfully submitted,

/s/ Nicole D. Galli

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ARONOFF LLP

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Media, Inc. doing business as
ShopHQ*

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2013, I served the foregoing paper, DEFENDANT SHOPHQ'S ANSWER TO PLAINTIFF TEMP-TATIONS, LLC'S VERIFIED COMPLAINT, by electronically filing it using the ECF system. The foregoing paper is available for viewing and downloading from the ECF system. All parties have consented to electronic service.

/s/ Nicole D. Galli

NICOLE D. GALLI